

1 be specific. Let me refer you first to the third page.

2 This is a letter dated January 24, 1994.

3 A I have it.

4 Q Is that your signature on the letter?

5 A It is.

6 Q To whom did you address the letter?

7 A To John Booth, the licensee of WRBR.

8 Q Why did you write this letter?

9 A I wanted to engage the services of Tim Moore,  
10 Audience Development Group, at WLTA. I was going to do that  
11 at WLTA as stated in this letter.

12 Again, Tim was a broadcaster, had operated radio  
13 stations, and I felt that he could contribute to the success  
14 of WRBR, and yet I felt it was not my prerogative to without  
15 some kind of authorization from the licensee, Mr. Booth, so  
16 I wrote to him and asked if -- urged him rather to engage  
17 Mr. Moore for WRBR. That happened in January.

18 Q If you would turn with me to the next page?

19 JUDGE CHACHKIN: Wait a minute. It is not just  
20 WRBR, is it? It is also WLTA?

21 THE WITNESS: That's right, but I was asking Mr.  
22 Booth's permission.

23 JUDGE CHACHKIN: In the first place, it does not  
24 do us any good to refer to letters. The letter is not in  
25 evidence. Nobody is going to know what we are talking

1 about.

2 If the letter is not read and it is not put in  
3 evidence, then what in the world are we talking about?  
4 Someone is going to try to refer to something that was said  
5 referring to a letter. It means nothing unless we have the  
6 contents of that letter.

7 MR. GUZMAN: Your Honor, I had intended to move  
8 for the admission of this letter. I can do it now, if you  
9 would like.

10 JUDGE CHACHKIN: Well, you are putting on your  
11 cross-examination. I am just telling you at some point this  
12 letter has to come in or else the testimony will not mean a  
13 thing.

14 MR. GUZMAN: I move for the admission of  
15 Pathfinder Exhibit 37, the third page of that exhibit.

16 JUDGE CHACHKIN: Wait a minute. You are telling  
17 me it is your intention to put in all these exhibits or any  
18 portion of these exhibits?

19 MR. GUZMAN: The documents that I will be using  
20 during the cross-examination, I would like to move certain  
21 of them into evidence, yes.

22 JUDGE CHACHKIN: I have no problem with that,  
23 except we are not going to start with No. 37 if there are  
24 not going to be 37 prior exhibits in evidence.

25 The Bureau, I understood, identified the exhibits

1 they are going to put in, and presumably they are going to  
2 put in most of them; not all of the exhibits. They are  
3 going to attempt to introduce them. How come we are calling  
4 this 37? What happened to 1 through 36?

5 MR. GUZMAN: Your Honor, I appreciate that it is a  
6 little bit complicated, but --

7 JUDGE CHACHKIN: This is your first exhibit. This  
8 should be Exhibit 1.

9 MR. GUZMAN: Your Honor, this is the  
10 cross-examination. During the Commission's case --

11 JUDGE CHACHKIN: It does not matter when. It is  
12 going to be your first exhibit. If you want to introduce  
13 it, it should be Exhibit 1 --

14 MR. GUZMAN: I understand.

15 JUDGE CHACHKIN: -- unless you are willing to say  
16 you are going to put in all these other exhibits at some  
17 point.

18 MR. GUZMAN: If it is all right with you, Your  
19 Honor, let's mark this for identification as Pathfinder  
20 Exhibit 1, and I will move for admission in that way.

21 (The document referred to was  
22 marked for identification as  
23 Pathfinder Exhibit No. 1.)

24 JUDGE CHACHKIN: All right. This is a one page  
25 document dated January 24, 1994, signed by Steve Kline,

1 addressed to John L. Booth, II. Any objection to its  
2 receipt in evidence?

3 MR. SHOOK: No, Your Honor.

4 JUDGE CHACHKIN: All right. This is Pathfinder  
5 Exhibit 1?

6 BY MR. GUZMAN:

7 Q Let me turn your attention, Mr. Kline, to --

8 JUDGE CHACHKIN: This is going to be Pathfinder  
9 Exhibit 1?

10 MR. GUZMAN: Yes, it is, sir.

11 JUDGE CHACHKIN: And have you supplied the  
12 reporter with two copies of this document? How are we going  
13 to handle this?

14 MR. GUZMAN: The reporter has our binders, sir.

15 JUDGE CHACHKIN: The binder is not going to do him  
16 any good. I do not think he has your document. You have to  
17 supply him with two copies of the document.

18 MR. GUZMAN: We can do that, Your Honor. If it is  
19 all right with you, perhaps we can do it at the end of  
20 today's session; that is, clean up the record and give it to  
21 the reporter.

22 JUDGE CHACHKIN: All right.

23

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as  
4 Pathfinder Exhibit No. 1, was  
5 received in evidence.)

6 MR. GUZMAN: Your Honor, if I may?

7 JUDGE CHACHKIN: Yes.

8 MR. GUZMAN: The subject of what had been talked  
9 about as the document following No. 47 in Pathfinder's  
10 exhibits is marked for identification as Mass Media Bureau  
11 Exhibit No. 48.

12 JUDGE CHACHKIN: All right. Obviously there are  
13 already two copies of that in the record.

14 BY MR. GUZMAN:

15 Q I would like to refer you, Mr. Kline, to the next  
16 page. That is the fourth page behind Tab 37.

17 A I have it.

18 MR. GUZMAN: Let me identify this as Pathfinder  
19 Exhibit 2.

20 JUDGE CHACHKIN: This is what? This is the letter  
21 from Booth to Kline?

22 MR. GUZMAN: Correct, dated January 26, 1994.

23 JUDGE CHACHKIN: All right. The document will be  
24 marked for identification as Pathfinder Exhibit 2.

25

1 (The document referred to was  
2 marked for identification as  
3 Pathfinder Exhibit No. 2.)

4 BY MR. GUZMAN:

5 Q Do you recognize this letter, Mr. Kline?

6 A I do.

7 Q Can you tell us what it is, please?

8 A This is a response to my letter of January 24 to  
9 John Booth agreeing that he would like to hire Tim Moore and  
10 the Audience Development Group and that he would --

11 JUDGE CHACHKIN: Well, do not read what it says in  
12 the letter. It is in evidence. We can all read it. If you  
13 can provide some additional information concerning  
14 circumstances of the letter that is one thing, but just to  
15 read portions of the letter does not advance the record.

16 MR. GUZMAN: Perhaps I could facilitate.

17 BY MR. GUZMAN:

18 Q Mr. Kline, you had said earlier that you had  
19 proposed to Mr. Booth that Tim Moore be hired as the program  
20 consultant at WRBR. Is that right?

21 A Yes.

22 Q Is this the letter that you received back from Mr.  
23 Booth in response to that proposal?

24 A Yes, it is.

25 Q Let me call your attention to the cc down at the

1 bottom of the document. Do you see that?

2 A I do.

3 Q It says cc: Vince Ford, V-P/GM, WRBR. As of  
4 January 26, 1994, who was Vince Ford? What was his  
5 function?

6 A He was the vice-president and general manager of  
7 WRBR. He was there when I got there in October of 1993.

8 MR. GUZMAN: Your Honor, I move for the admission  
9 of Pathfinder Exhibit 2.

10 JUDGE CHACHKIN: Any objection?

11 MR. SHOOK: None, Your Honor.

12 JUDGE CHACHKIN: Exhibit 2 is received.

13 (The document referred to,  
14 having been previously marked  
15 for identification as  
16 Pathfinder Exhibit No. 2, was  
17 received in evidence.)

18 JUDGE CHACHKIN: You stated that you will give an  
19 original and a copy to the reporter of the exhibits which  
20 you are identifying?

21 MR. GUZMAN: Yes, Your Honor.

22 JUDGE CHACHKIN: All right.

23 BY MR. GUZMAN:

24 Q Now, as of the time that Tim Moore was hired to be  
25 a program consultant for WRBR, what types of services did he

1 provide to that radio station?

2 A He did an analysis of format gaps in the market.  
3 The radio station, at the time that he did the analysis, was  
4 an oldies radio station, and he was attempting to provide  
5 some guidance on should that radio station continue as an  
6 oldies radio station or perhaps consider another format.

7 Q Who supervised the activities of Mr. Moore?

8 A I did. Mr. Hicks was involved in it. He knew Mr.  
9 Moore before I did. They were both Michigan broadcasters,  
10 so I had -- Mr. Moore had the credibility with Mr. Hicks to  
11 perform.

12 We supervised the project. It's something we  
13 talked about a lot, trying to cement his long term  
14 association with WRBR and with Mr. Hicks and suggesting  
15 there were things that he could do as a consultant to  
16 improve the quality of that radio station; program,  
17 formatic.

18 Q Now, as it relates to Mr. Moore's work for WRBR,  
19 did Mr. Dille have any involvement in that?

20 A No.

21 Q Was Mr. Moore also a consultant at that same time,  
22 that is early 1994, for WLTA, the --

23 A Yes.

24 Q -- Pathfinder station?

25 A Yes, he was.



1 Q Tell us how that employment came into being.

2 A He has a good reputation as a program consultant.  
3 He was close. He was in Grand Rapids, and I'm in South  
4 Bend. He has radio stations all over the country that he  
5 consults.

6 I don't know the specific -- I mean, there's a lot  
7 of sources of information about the Audience Development  
8 Group. They advertise in the trades. They're very well  
9 respected. They participate in national radio seminars.

10 It was my intent to hire him as a program  
11 consultant for WLTA, which was the light AC, in early 1994.

12 Q And in fact you did hire Mr. Moore to be a  
13 consultant for WLTA?

14 A I did.

15 Q Did there come a time when you stopped using the  
16 services of Mr. Moore for WLTA?

17 A Yes.

18 Q Tell us about that, please.

19 A It was not pleasant. There was a period of time  
20 when we had decided to change the format of WLTA to country,  
21 and that was not an area of format that Mr. Moore had a lot  
22 of experience in. There was also available a very good  
23 country program consultant available, and I wanted that  
24 person to be my consultant at the new country radio station.

25 I terminated Mr. Moore's services with WLTA that

1 was going to become WBYT, the country station. That was not  
2 pleasant because we did maintain and continue, and I think  
3 very successfully, our relationship at WRBR, but I dismissed  
4 and replaced Mr. Moore at WLTA.

5 Q At the time when you stopped using Mr. Moore to  
6 consult for WLTA, did you make that decision in conjunction  
7 with Mr. Dille?

8 A Mr. Dille was aware of the Rusty Walker Consulting  
9 Services, and he concurred that Rusty Walker would be the  
10 best choice for a country radio station.

11 Q When you stopped using Mr. Moore for WLTA, you  
12 knew that he was a long-time colleague and associate of Mr.  
13 Hicks, did you not?

14 A That's correct.

15 Q Did Mr. Hicks try to intervene in any way to stop  
16 you from terminating Mr. Moore at WLTA?

17 A No.

18 Q Did you worry that you could not terminate Mr.  
19 Moore with respect to WLTA because of his association with  
20 Mr. Hicks?

21 A No. That had nothing to do with Mr. Hicks.

22 JUDGE CHACHKIN: That is what I thought. I was  
23 wondering why you were asking these questions unless we are  
24 arguing that Mr. Hicks was somehow involved with WLTA.

25

1 BY MR. GUZMAN:

2 Q At some point you testified that WRBR changed  
3 formats and moved from an oldies format to an active rock  
4 format. If I am correct, you testified that the impetus for  
5 that change was the Bob and Tom Show. Is that right?

6 A The availability of the Bob and Tom Show. Keep in  
7 mind that prior to -- during 1995, the Bob and Tom Show was  
8 in the market, but not on our radio station. We had seen  
9 the impact that it made in a short period of time on a low  
10 power, high frequency, AM radio station.

11 Dave and I concurred that when it became  
12 available, or at least if it was not on the air on that  
13 other radio station, this would give us reason to look at  
14 our policies on programming. Boy, if we could get that for  
15 our morning show.

16 It worked out good. It was a joint project. Mr.  
17 Hicks has another Michigan broadcaster who was involved, and  
18 I'm not sure if he was an agent or a broker or just how he  
19 was involved with this syndicated show, but he lived in  
20 Detroit. His name was Rob Ridder. He is the person who was  
21 handling the syndication of that program. Mr. Hicks knew  
22 him.

23 The general manager of Q95 Radio in Indianapolis,  
24 the originating station for Bob and Tom, their primary  
25 employer for the last 12 years had been a general manager

1 with me in Cincinnati at another radio station back in the  
2 1970s or in the 1980s, the early 1980s, so we felt we had a  
3 good network there from two different directions to try to  
4 get this radio show. We successfully went through the steps  
5 kind of independent of each other, but with a fruitful  
6 conclusion.

7           You must keep in mind they were just at that time  
8 trying to syndicate across the country. The originating  
9 station was anxious to be back on the air in South Bend.  
10 They did not want that program to be off because other  
11 prospective radio stations could say what happened in South  
12 Bend, and why aren't you on the air now? You used to be,  
13 and now you're gone. They were receptive to my advances,  
14 and Mr. Hicks was also talking to the syndicator through Mr.  
15 Ridder.

16           Q     So you and Mr. Hicks recognized an opportunity to  
17 get the Bob and Tom Show on your radio station?

18           A     Exactly.

19           Q     And you went out and did that?

20           A     We did that, and that occurred in six or eight  
21 weeks; less time than it takes to do an inflatable bear. I  
22 mean, really. It happened quickly because the market had  
23 been exposed to them for a year or close to it.

24           Q     Did Mr. Dille have any participation in getting  
25 the Bob and Tom Show on the air at WRBR?

1           A     I don't think he knew about it.

2           Q     Now, the Bob and Tom Show led to a format change  
3     at WRBR?

4           A     Yes.

5           Q     Who was involved in deciding to make that format  
6     change?

7           A     Mr. Hicks, of course, and Tim Moore from the  
8     Audience Development Group, the program director, Joe  
9     Turner, and myself.

10          Q     Did Mr. Dille have any involvement in that format  
11     change?

12          A     Mr. Dille was not aware of that format change.

13          Q     Mr. Kline, let me refer you to another document.  
14     This is in our second binder under Tab 77.

15                 JUDGE CHACHKIN: Let me make clear that after  
16     today, if you want to introduce any exhibits you will have a  
17     copy of the original and a copy for the reporter at that  
18     time so he can stamp it and so we have an orderly record.  
19     Otherwise we are going to have a big mess. That goes for  
20     all parties.

21                 MR. GUZMAN: As a point of clarification, Your  
22     Honor, at the outset of the proceeding we had exchanged,  
23     Hicks Broadcasting had exchanged, materials with the other  
24     parties as well.

25                 JUDGE CHACHKIN: So you do not have to get copies

1 to the other parties, but you do have to have an original  
2 and a copy for the reporter.

3 MR. GUZMAN: We have also given or have two copies  
4 to give two copies of our exhibits to the court reporter as  
5 well.

6 However, we had misunderstood the import of your  
7 pre-hearing scheduling Order and had, as you had indicated  
8 in our hearing back on the 6th, labeled our exhibits  
9 already.

10 JUDGE CHACHKIN: Yes, but you have not marked the  
11 exhibits. You said these are documents which you may or may  
12 not offer.

13 MR. GUZMAN: Correct.

14 JUDGE CHACHKIN: In order to have an orderly  
15 record here, we have to have a chronology starting with 1,  
16 Exhibit 1.

17 MR. GUZMAN: That is why what we propose to do,  
18 Your Honor, is simply to recapitulate another set of labels,  
19 use the existing set of documents that we have, and as we  
20 introduce them simply give the court reporter and the other  
21 parties a set of labels to relabel the documents.

22 JUDGE CHACHKIN: All right. My concern is with  
23 the record that is with the court reporter --

24 MR. GUZMAN: Right.

25 JUDGE CHACHKIN: -- so he has a chance to stamp

1 each copy, the original and a copy, so we have an orderly  
2 record for purposes of review.

3 MR. GUZMAN: We will clear it up, Your Honor. I  
4 apologize for the inconvenience.

5 JUDGE CHACHKIN: All right. What exhibit do you  
6 want to look at now?

7 MR. GUZMAN: This is behind Tab 77 in our binder.  
8 Let's identify it as Pathfinder Exhibit No. 3, and it is a  
9 memo from the Audience Development Group dated January 12,  
10 1996.

11 JUDGE CHACHKIN: The document is marked for  
12 identification.

13 (The document referred to was  
14 marked for identification as  
15 Pathfinder Exhibit No. 3.)

16 JUDGE CHACHKIN: Go ahead.

17 BY MR. GUZMAN:

18 Q Mr. Kline, take a moment and familiarize yourself  
19 with this document. Then I will ask you if you have ever  
20 seen it before and ask you to tell us a little bit about it.

21 (Pause.)

22 A Yes. This is a review of the state of the  
23 station, if you will, and programming matters that we sent  
24 to Steve Kline and Dave Hicks regarding the state of WRBR as  
25 of January 12, 1996.

1           Now, at the time of this it included a review of  
2   the fall, 1995, ratings as indicated. Mr. Moore quite  
3   eloquently, as he does in many of his reports, continues on  
4   and on and on about the state of the radio station.

5           At this time in January of 1996, Mr. Moore was not  
6   aware of our attempts, you know, to perhaps have a new  
7   morning show. There's no discussion in here of Bob and Tom,  
8   which occurred in March of that year. This is a state of  
9   the health of the radio station in its condition as of  
10  January, 1996.

11           His conclusion is to improve our oldies position  
12  through better implementation and marketing or attack the  
13  underside of the adult contemporary culture that existed in  
14  South Bend with he refers to it in his term a diet, a light,  
15  CHR, contemporary hit radio.

16           He's saying either continue to do the oldies with  
17  a little bit more implementation, a better implementation,  
18  or you could consider going in between Sunny and WNDU-FM  
19  with a different format.

20           MR. GUZMAN: Thank you.

21           Your Honor, move for the admission of Pathfinder  
22  Exhibit No. 3.

23           JUDGE CHACHKIN: Any objection?

24           MR. SHOOK: None, Your Honor.

25           MR. GUZMAN: Pathfinder Exhibit 3 is received.



1 (The document referred to,  
2 having been previously marked  
3 for identification as  
4 Pathfinder Exhibit No. 3, was  
5 received in evidence.)

6 MR. GUZMAN: Let's turn to Tab 78, Mr. Kline.

7 I would mark this document for identification as  
8 Pathfinder Exhibit 4, handwritten notes dated February 5,  
9 1996.

10 JUDGE CHACHKIN: The document will be so marked.

11 (The document referred to was  
12 marked for identification as  
13 Pathfinder Exhibit No. 4.)

14 BY MR. GUZMAN:

15 Q Mr. Kline, do you recognize these notes?

16 A That's my handwriting. This is a formal note for  
17 me.

18 Q Does this note reflect a meeting that you had?

19 A It does. It was held on 2-5-96.

20 Q Who attended this meeting?

21 A As indicated on the top line, Brad Williams,  
22 general sales manager, myself, Dave Hicks and Tim Moore.

23 Q What was the subject of this meeting?

24 A Further discussion at this time. Now we're a  
25 month later down the road, and at this time we have an idea.

1 I don't know that we have a contract yet, but we have an  
2 idea that we're going to have the Bob and Tom Show.

3 Then the purpose of this meeting, this would have  
4 been the initial meeting to talk about what's going to go  
5 with that? What are we going to do the other 20 hours of  
6 the day?

7 One of the things we considered -- it's written  
8 down and then crossed out -- is a recommendation that there  
9 was a possibility from the earlier document regarding that  
10 diet CHR. We talked about it. We decided no, we're not  
11 going to do that, again I think because of competitive  
12 reasons. The two major, major radio stations in the market  
13 kind of had that mountain to themselves.

14 Item 2 there on that page is talking about active  
15 rock, which again is identified to take us directly towards  
16 WAOR and WZOW. These were both rock stations in town. They  
17 would become our competitors. They were not as formidable  
18 competitors as WNSN and WNDU, more compatible, as I state  
19 there, with Bob and Tom, and AOR is more vulnerable than  
20 WNSN.

21 MR. GUZMAN: Thank you, Mr. Kline.

22 Move for the admission of Pathfinder Exhibit 4.

23 JUDGE CHACHKIN: Any objection?

24 MR. SHOOK: Both pages on this?

25 MR. GUZMAN: Yes.

1 JUDGE CHACHKIN: Any objection?

2 MR. SHOOK: No objection.

3 JUDGE CHACHKIN: Pathfinder Exhibit 4 is received.

4 (The document referred to,  
5 having been previously marked  
6 for identification as  
7 Pathfinder Exhibit No. 4, was  
8 received in evidence.)

9 MR. GUZMAN: Mr. Kline, let me refer you to Tab  
10 122 in the Pathfinder binder.

11 Let's identify it as Pathfinder Exhibit No. 5.

12 JUDGE CHACHKIN: The document is so marked.

13 (The document referred to was  
14 marked for identification as  
15 Pathfinder Exhibit No. 5.)

16 BY MR. GUZMAN:

17 Q Mr. Kline, do you recognize this memo?

18 A Yes, I do.

19 Q Who is the author of this memo?

20 A The program consultant, Tim Moore, of the Audience  
21 Development Group.

22 Q Who were the recipients of this memo, as indicated  
23 on the memo?

24 A Myself and Joe Turner, the program director, and  
25 the owner of the station, Dave Hicks.

1           Q     Just in brief, can you tell us what the subject  
2     matter of this memo is?

3           A     Well, I don't have the date of this, but we are  
4     down the road towards the new format. This may even be fine  
5     tuning strategy after the format was introduced, although I  
6     doubt it because it talks on some of the included pages  
7     about the positioning statements that we were going to use,  
8     how we were going to describe ourself on the air.

9                     There's time involved in producing these. We have  
10    to send these out to our voice person that produces these,  
11    so I would assume that this happened prior to March 17,  
12    1996, but very close to that date.

13          Q     But in any event, this is a memo discussing  
14    possible formats and possible programming changes with  
15    respect to WRBR?

16          A     That's right.

17          Q     Let's shift gears and talk about personnel  
18    practices at WRBR.

19                     JUDGE CHACHKIN: You are not offering this?

20                     MR. GUZMAN: Pardon me. I did intend to offer  
21    this for admission.

22                     JUDGE CHACHKIN: Any objection?

23                     MR. SHOOK: No objection, Your Honor.

24                     JUDGE CHACHKIN: Pathfinder Exhibit 5 is received.

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as  
4 Pathfinder Exhibit No. 5, was  
5 received in evidence.)

6 MR. GUZMAN: Thank you, Your Honor.

7 BY MR. GUZMAN:

8 Q Let's talk about personnel practices at WRBR, Mr.  
9 Kline. Who has the authority to hire and fire employees at  
10 WRBR?

11 A I do.

12 Q Do you ever consult with Mr. Hicks relative to  
13 such decisions?

14 A I do, yes.

15 Q On what types of decisions might you consult Mr.  
16 Hicks?

17 A Well, if I'm hiring and it's a lot of money, I'll  
18 always ask him. If it's a termination, it's probably not a  
19 surprise. He would have been aware that this is what I  
20 wanted to do leading up to it. I think I have a lot of  
21 tolerance in those matters, so it is not spontaneous, but I  
22 would consult with Mr. Hicks about that.

23 Q Has Mr. Hicks ever come to you and given you input  
24 into personnel related matters?

25 A He has, yes. Bob and Tom, they are employees.

1 That was his idea from the very beginning. He has made  
2 suggestions and recommendations and evaluations of  
3 employees. It's an ongoing -- it's not a one way street. I  
4 mean, I'm not just always talking to Mr. Hicks about it. He  
5 talks to me about it.

6 An area that's probably very high profile as you  
7 discuss things like that would be the sales department  
8 because he's getting those Friday reports, you know, and  
9 it's pretty easy for him to see goose eggs, if that's the  
10 case, on a person's name. He'll ask about it, you know. Is  
11 this working out as it should?

12 Q You mentioned this morning that there were a  
13 number of employee functions that got consolidated in the  
14 months after WRBR was purchased by Mr. Hicks. Did Mr. Hicks  
15 provide you input and suggestions relative to that  
16 consolidation?

17 A He did. We had -- some of those activities were  
18 very logical and did not require a lot of discussion. We  
19 did not need two receptionists for one operation of 25  
20 people. We did not need two office managers. We did not  
21 need two traffic people. Those are functions that can best  
22 be efficiently performed by a single person, and, yes, we  
23 did discuss that.

24 JUDGE CHACHKIN: This is for WRBR, 25 employees?

25 THE WITNESS: No. No. There's not that many

1 employees at WRBR.

2 JUDGE CHACHKIN: So what are you referring to?

3 THE WITNESS: That in the operation, the total  
4 operation, there would be only 25 employees.

5 JUDGE CHACHKIN: What is the total operation?  
6 Both stations? Is that what you mean?

7 THE WITNESS: Yes. WBYT and WRBR.

8 BY MR. GUZMAN:

9 Q Since the Judge asked that, let's talk about that  
10 for just a second. In 1994, in early 1994 after Mr. Hicks  
11 purchased WRBR, how many full-time employees would you say  
12 worked at WRBR?

13 A When?

14 Q Let's take April, 1994.

15 A Well, April of 1994, 100 percent. I don't know  
16 whether that figure was eight, nine, ten people -- less than  
17 a dozen -- that would have worked at WRBR.

18 Now, when that acquisition was made, I offered  
19 position on a temporary basis to everybody who had been  
20 employed at WRBR, a probation period, if you will, because I  
21 believe many of those people as employees of Booth had  
22 accrued benefits which were not our responsibility. I think  
23 it was like a clean slate for them when they came to work  
24 for Hicks Broadcasting. They had accrued vacation time or  
25 retirement benefits.

1           That was all handled before I was general manager  
2   at WRBR, so when those people came to work for the radio  
3   station really the activity didn't change, but on Friday  
4   they're at Booth, and on Monday they're still doing their  
5   same job, and I'm hiring them temporarily as employees of  
6   Hicks Broadcasting.

7           Q     As of say late in the year, 1994, how many  
8   full-time employees were there at RBR?

9           A     Exclusive or shared?

10          Q     Let's start with exclusive.

11          A     Four or five.

12          Q     How about if you included the shared employees?

13          A     There would have been -- well, then we're probably  
14   back to eight, nine or ten.

15          Q     With whom were these employees shared?

16          A     With WLTA.

17          Q     Did WRBR ever employ a person by the name of Sarah  
18   Aerlocker?

19          A     Yes, we did.

20          Q     What was her function at WRBR?

21          A     She was in the sales department at one time.

22          Q     Now, Sarah Aerlocker is Mr. Dille's daughter? Is  
23   that not right?

24          A     That's correct.

25          Q     Did there come a time when you terminated Sarah



1 Aerlocker?

2 A I did.

3 Q Why was that?

4 A She was missing too much work, and it was a  
5 position in sales. That was the kind of position where you  
6 couldn't take that kind of liberty.

7 Q Did you consult with Mr. Dille before you made  
8 that termination?

9 A Not before.

10 Q How about after?

11 A I think I was the second person to tell him about  
12 it.

13 Q This morning we spoke a little bit about the joint  
14 sales agreement, and there were a lot of questions which  
15 showed that you were not necessarily in the best position to  
16 address that whole subject.

17 A I'm sorry. I didn't hear.

18 Q We discussed the joint sales agreement this  
19 morning, and it became clear that you were not the best  
20 person to address that subject.

21 A Right.

22 Q In your opinion, who is the best person to address  
23 that subject?

24 A The parties to the agreement, the ownership or  
25 whoever executes that agreement.

1 JUDGE CHACHKIN: Was there anyone besides you who  
2 was responsible for implementing the agreement?

3 THE WITNESS: No. The other person that would be  
4 involved in the detail of that agreement would be a member  
5 of the bookkeeping department, Bob Watson, who would be more  
6 familiar with the terms of that agreement.

7 Again, it was a legal definition of a situation  
8 that occurred prior to the time I got there. I wasn't too  
9 interested in it, knowing that my day to day duties were  
10 simply to maximize the revenue for the two entities.

11 BY MR. GUZMAN:

12 Q Let's change topics again and discuss the  
13 finances, control of the finances of WRBR.

14 You described for us this morning a budget  
15 process. As I understood it, there were essentially three  
16 parts to the budget that you put together, all following  
17 roughly the same process. Am I right in understanding that  
18 you create a revenue budget, an operating budget and a  
19 capital budget for WRBR?

20 A That's correct.

21 Q Now, in the first instance, in what you might call  
22 the draft phase, who were the people that worked to put that  
23 together?

24 A Sales staff, WRBR, general sales manager, WRBR,  
25 sales consultant, an outside consultant for WRBR, and

1       myself.   Not Mr. Hicks.

2           Q       I believe you said that at the point when this  
3       budget gets taken to that step in the process, you then  
4       consult Mr. Watson in the business office for some  
5       assistance.   Is that right?

6           A       Only to do the spreadsheet calculations of what we  
7       decided we're going to do.   It follows a pattern, the  
8       history of the previous year.

9                   It is based on an increase of revenue over the  
10      previous year and historically will follow the same pattern  
11      of when that's going to occur, so it's a function of the  
12      office to prepare a 13 column chart that here's what we're  
13      going to do January through December, and here's what it'll  
14      be for the year.   That is prepared, yes, by the business  
15      office.

16          Q       In your view, does the business office have any  
17      approval or veto authority --

18          A       Absolutely not.

19          Q       -- over items in the budget?

20          A       Absolutely not.

21          Q       Has the business office or Mr. Watson ever tried  
22      to exercise such authority?

23          A       No.

24          Q       There comes a time when Mr. Hicks participates in  
25      the process?   Is that not right?

1           A     Yes. We do Phase 2, which is the expense part of  
2     it, and it is after those two are completed, revenue and  
3     expense, and I've got a good margin. That's when I take it  
4     to Mr. Hicks.

5                     That usually occurs -- well, I know what we're  
6     going to do in 1999 today. He doesn't. That usually occurs  
7     in December. For 1999, we have not yet prepared our expense  
8     budget

9           Q     Has Mr. Hicks, in his review and approval of the  
10    budgets, ever questioned various line items in them?

11          A     Yes, he does.

12          Q     Has he ever disapproved any items in the budget?

13          A     Well, there's a third budget, the capital expense  
14    budget, and Mr. Hicks has more hands on -- in fact, 100  
15    percent of it -- with that budget, so there have been items  
16    that he has disapproved of there.

17                     JUDGE CHACHKIN: Let's take a ten minute recess.

18                     (Whereupon, a short recess was taken.)

19                     JUDGE CHACHKIN: On the record.

20                     MR. GUZMAN: Thank you, Your Honor.

21                     Before the break, Mr. Kline, we had turned to Tab  
22    71, which I would like to mark for identification as  
23    Pathfinder Exhibit No. 6. This is a letter from Dave Hicks  
24    to Steve Kline dated July 23, 1995

25                     MR. SHOOK: Your Honor, excuse me, but that is a

1 duplicate of a Mass Media Bureau exhibit, which we did, I  
2 believe --

3 JUDGE CHACHKIN: What is it? Tell me the number  
4 of the Mass Media Bureau.

5 MR. BOYCE: I believe it is No. 110. Let me  
6 check.

7 THE WITNESS: That sounds correct.

8 JUDGE CHACHKIN: All right. We will use the  
9 Bureau exhibit, which has already been identified.

10 BY MR. GUZMAN:

11 Q That is Mass Media Bureau Exhibit No. 110. Mr.  
12 Kline, you received this note from Dave Hicks?

13 A That's correct.

14 Q Let me turn your attention to the first sentence  
15 of it. "Congratulations on a money making June for WRBR."  
16 Could you just describe briefly for us what the  
17 circumstances were at WRBR in June?

18 A Well, this was a letter dated July 23. That means  
19 by this point in time Mr. Hicks had received his financial  
20 statements for the month of June, and I know where he goes;  
21 the first cell on that Excel report. It showed profit. He  
22 is just acknowledging that in this letter to me.

23 Q Now, he goes on to question a number of line items  
24 from the budget. The first one is to the Associated Press,  
25 \$600. Tell us what he was questioning there, please.

1           A     We had had some discussions about that expense,  
2     the \$600 expense.  Although he does congratulate us on a  
3     good June, he's got some concerns, and he brings them up in  
4     the same letter.

5                     We had discussed at that time replacing the  
6     Associated Press expense of \$600 with another source for our  
7     news, and so he goes on to state, "I would hope we are  
8     nearing the end of this."

9                     That was by contract.  We couldn't just  
10    arbitrarily stop.  We had to finish out a contract.  We had  
11    to finish out the expense.

12          Q     We have already talked about the rent, so I will  
13    not detain us longer there.

14                    Let's skip down to Hicks telephone expense, \$157.  
15    Just briefly tell us what Mr. Hicks was inquiring about  
16    there.

17          A     That had to be a department expense because that  
18    is light for the total phone expense for that radio station  
19    in a month's time.  I don't know by looking at this without  
20    going back to the June financial and finding exactly that  
21    \$157.

22                    His question, though, is, "Is this in addition to  
23    the cellular trade?"  We did have cell phones for certain  
24    employees, and this was in addition to that.  This was a  
25    cash expense on his June financial.  I don't know what

1 department it would have been.

2 Q How did you respond to Mr. Hicks' inquiries about  
3 line items in the budget?

4 A In this letter?

5 Q Right.

6 A I would have had a phone conversation with him. I  
7 would not have written to him with an explanation.

8 Q Was it unusual, in your experience, to have Mr.  
9 Hicks be inquiring about various items from the budget?

10 A No.

11 Q Turn with me, if you would, to Pathfinder Tab 100.

12 MR. GUZMAN: Excuse me a moment, Your Honor. I  
13 think I have confused myself with all these exhibits.

14 (Pause.)

15 MR. GUZMAN: I am going to endeavor to do this out  
16 of the Mass Media Bureau exhibits. It will make it easier  
17 for us all.

18 BY MR. GUZMAN:

19 Q Let me refer you to Mass Media Bureau Exhibit 100.

20 A What volume?

21 Q That is Volume 3.

22 A I have it in front of me.

23 Q Okay. Do you see the handwritten numbers at the  
24 bottom? If you would turn to page 5, please?

25 A I have it.

1           Q     Up at the top of that page you see a reference to  
2     the 1997 capital expenditures budget being reviewed, and  
3     then there is some discussion of a significant line item,  
4     one Plymouth Prowler. Do you remember that discussion?

5           A     Yes, I do.

6           Q     Tell us a little bit about that.

7           A     Part of my capital expense request for 1997 was  
8     for \$37,000 to purchase as a signature vehicle for the radio  
9     station a Plymouth Prowler, which is a hot automobile that  
10    has a very high profile. It's show business. It would have  
11    been good for the radio station.

12          Q     And you proposed that the management of Hicks  
13    Broadcasting Company purchase that for the radio station?

14          A     That's right.

15          Q     What was their response?

16          A     They thought it was too much money.

17          Q     Do you have a Plymouth Prowler for WRBR?

18          A     No, we do not.

19          Q     Let's turn to page 10 in this same tab, Mass Media  
20    Bureau Exhibit 100.

21          A     I have it.

22          Q     I guess the discussion I am looking at is actually  
23    at the top of page 11. Well, at the bottom of page 10 and  
24    the top of page -- I apologize. Let's go back to the bottom  
25    of page 10.



1           There is some discussion about the Prowler again  
2           and then this bear that we discussed. As I understood it,  
3           these were both capital expenditures. The Prowler was  
4           disapproved. The bear was approved. Who approved these?

5           A     Dave and the board, I assume.

6           Q     I had referred to the members of Hicks  
7           Broadcasting as the management of Hicks Broadcasting. Do  
8           you know who the owners of Hicks Broadcasting are?

9           A     I do.

10          Q     Who are those?

11          A     Dave Hicks, Alek Dille, Flint Dille, Sarah  
12          Aerlocker.

13          Q     Now, we have discussed just a few examples of Mr.  
14          Hicks' and the minority shareholders' review and approval or  
15          disapproval of certain items in the budget. Did Mr. Dille  
16          ever participate in the RBR budget process in any way?

17          A     He did not.

18          Q     Did he ever require expenditures of WRBR funds?

19          A     Did he ever require?

20          Q     Right, or suggest to you ideas that would have  
21          required --

22          A     Oh, no.

23          Q     -- the expenditure of WRBR funds.

24          A     No.

25          Q     Did Mr. Dille ever attempt to veto WRBR capital

1 expenditures?

2 A He did not.

3 Q I think you testified this morning that as a  
4 routine matter, you approved the expenditures at WRBR. Is  
5 that right?

6 A That's correct.

7 Q Are there categories of items that you feel that  
8 would require Mr. Hicks' pre-approval?

9 A Yes. If they were major, if they were out of  
10 budget especially, if they were emergency, if they were  
11 things I had not planned on, I wouldn't make the expenditure  
12 without asking.

13 Q Do you approve the legal bills for Hicks  
14 Broadcasting?

15 A No.

16 Q How about accounting bills?

17 A No.

18 Q Just one last question. You have been the general  
19 manager of WRBR since April of 1994? Is that right?

20 A That's correct.

21 Q During that time, have you ever regarded Mr. Dille  
22 as your boss or supervisor?

23 A At WRBR?

24 Q As it relates to WRBR.

25 A No.

1 JUDGE CHACHKIN: Sir, how did you fix April, 1994,  
2 as the date which you became general manager of WRBR?

3 THE WITNESS: I'm sorry. What date?

4 JUDGE CHACHKIN: In April, 1994, you claim you  
5 became general manager of WRBR. What happened on or about  
6 that date that made you general manager of WRBR?

7 THE WITNESS: Well, the stations were not  
8 co-located, and there was discussion with the owner at that  
9 time in April about for the convenience and the efficiency  
10 of the operation to move it.

11 There was a lot of planning and construction,  
12 things necessary to do that, so for the first time I was  
13 entering into areas that prior to April 1 I would have been  
14 forbidden to discuss.

15 JUDGE CHACHKIN: Well, you have not answered my  
16 question. Were you appointed by anyone to become general  
17 manager of WRBR on April 1, 1994?

18 THE WITNESS: No. Mr. Hicks was at that time --  
19 because of the newness of the operation, he was there. He  
20 lived in Kalamazoo, but he was at the radio station. We  
21 were simply making plans in concert to bring that radio  
22 station from its physical location about two miles away from  
23 where we were.

24 JUDGE CHACHKIN: Did anyone at any time in an  
25 official position say in so many words you are general